

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

EMILIO AGUIRRE, III,

Plaintiff,

v.

Case No. 08-C-1110

NURSE JUDY MILLER,
NURSE BARBARA OBERHART,
NURSE MARKELLA REED,
and NURSE JO ANN MEDLEY,

Defendants.

DECISION AND ORDER

Plaintiff Emilio Aguirre, III, who is incarcerated at Fox Lake Correctional Institution, is proceeding in forma pauperis on a civil rights claim under 42 U.S.C. § 1983 that the defendants were deliberately indifferent to his serious medical needs while he was confined in the Kenosha County Jail. On August 19, 2010, defendant Rick Witek was dismissed from this action when the court granted his motion for summary judgment.

The remaining defendants filed a motion for summary judgment on November 30, 2010, but the plaintiff did not file a response to that motion. His response to the motion was due by December 30, 2010. Instead, on January 4, 2011, the plaintiff filed a motion to dismiss this action without prejudice, stating that he was a pretrial detainee and not a sentenced prisoner on July 11, 2008, and, therefore, he “sees no reason on proceeding due to those potent facts.” (Plaintiff’s Motion to Dismiss at 1) (Docket # 77). In a letter filed on January 17, 2011, the defendants responded, stating that any dismissal should be with

prejudice due to the posture of this case and the plaintiff's failure to respond to the motion for summary judgment. The plaintiff did not respond to the defendants' letter.

Therefore, on June 6, 2011, the court entered an order granting the plaintiff additional time to July 6, 2011, to either respond to the defendants' letter seeking dismissal of the action with prejudice or, in the alternative, to file a brief in opposition to the defendants' motion for summary judgment. See Court's Decision and Order of June 6, 2011, at 2. In its order, the plaintiff specifically was advised that failure to file a response or brief by July 6, 2011, could result in dismissal of the action for lack of diligence in prosecuting the case pursuant to Civil Local Rule 41(c) (E.D. Wis.). The dismissal can be with or without prejudice. Id. To date, the plaintiff has not filed any documents in response to the court's order.

A review of the record indicates that dismissal for failure to prosecute is an appropriate sanction for the plaintiff's lack of diligence in prosecuting his case. The plaintiff has not responded either to the defendants' motion for summary judgment or to their letter requesting that the case be dismissed with prejudice, even though he was given an additional opportunity to do so. Thus, after due consideration, this court concludes that dismissal of this action with prejudice is appropriate. Accordingly, the plaintiff's action will be dismissed with prejudice.

NOW, THEREFORE, IT IS ORDERED that this action be and hereby is **dismissed** with prejudice for failure to prosecute.

IT IS FURTHER ORDERED that the clerk of court shall enter judgment accordingly.

Dated at Milwaukee, Wisconsin this 11th day of July, 2011.

BY THE COURT:

s/ Patricia J. Gorence
PATRICIA J. GORENCE
United States Magistrate Judge